

Quarterly Report
of the
ATTORNEY GENERAL
of
ALABAMA



For The Period
From April 1, 1954
Through June 30, 1954

VOLUME 75

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QUARTERLY REPORT
of the
ATTORNEY GENERAL
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**TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF
ALABAMA:**

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from April 1, 1954, through June 30, 1954, as published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

SI GARRETT,
Attorney General.

OPINIONS

April 7, 1954

Hon. C. F. Newell, Superintendent
Calhoun County Schools
Anniston, Alabama

Schools.

1. School trustees appointed under the provisions of Title 52, Section 100, Code of Alabama 1940, as amended by Act No. 310, General and Local Acts 1951, page 605, serve for a term of four years.
2. A school trustee who abandons his permanent residence or domicile in the territory served by the school, and acquires a permanent residence or domicile elsewhere, thereby vacates his trusteeship, as of the time of such abandonment.
3. Where a school trustee has abandoned his permanent residence or domicile in the territory served by the school, and has acquired a permanent residence or domicile elsewhere, having thus vacated his trusteeship, he does not at a later time regain his trusteeship merely by reestablishing his permanent residence or domicile in the territory served by the school.

Opinion by Assistant Attorney General Barton.

Dear Sir:

Your request for an official opinion, bearing date of February 8, 1954, is as follows:

"Please give your opinion on the following questions on Act No. 310, Regular Session of 1951, relating to schools, amending Section 100, Title 52, Code of Alabama (1940) which prescribes the qualifications and methods of selecting school trustees.

"1. Does this new act No. 310 prevent this Board from discharging appointments which were allowed by a former ruling, Rep. Atty. Gen. 1928-30, PP. 307, 308?

"2. If an appointed trustee moves from a school district is he disqualified?

"3. If the answer is yes to question 2, when does he become disqualified?

4. If he becomes disqualified what is his status if at some later date he moves back into the community?"

Title 52, Section 100, Code of Alabama 1940, as amended by Act No. 310, General and Local Acts 1951, page 605, provides as follows:

"The county board of education shall appoint for every school in the county, from a list of six discreet, competent, and reliable persons of mature years nominated by the patrons of the said school, which list shall be kept on file by the board, three persons residing near the schoolhouse, and having the respect and confidence of the community, to serve for a term of four years as trustees of the school, to care for the property, to look after the general interest of the school, and to make to the county board of education, through the county superintendent of education, from time to time, report of the progress and needs of the school, and of the will of the people in regard to the school. The board of education shall fill all vacancies occurring in the office of trustee for the unexpired term from the list of nominees on file until the names on such list are exhausted. The term 'patrons' as used herein shall be construed to mean the parents and guardians of children in attendance at the school."

1. In my opinion, your first question must be answered in the affirmative. Prior to the 1951 amendment, Section 100, *supra*, did not provide for the appointment of school trustees for any definite term. Biennial Report of Attorney General 1928-30, page 307. The purpose and effect of the 1951 amendment was to fix their tenure for a term of four years. Therefore, a trustee now serves for that period, unless for some good and sufficient legal reasons a vacancy in the office occurs, or he becomes disqualified from serving.

2. In my opinion, your second question must be answered in the affirmative. Section 100, as amended, *supra*, provides that trustees shall be "persons residing near the schoolhouse." This phrase has been construed to include all persons residing in the territory served by the school, regardless of the actual mileage distance such persons may live from the schoolhouse. See Quarterly Report of Attorney General, Vol. 57, page 74. A trustee must reside within the territory served by the school. If he abandons his permanent residence or domicile in that territory, and acquires a permanent residence or domicile elsewhere, in my opinion he thereby vacates his office as school trustee. Cf. Title 41, Section 160, Code of Alabama 1940.

3. Answering your third question, it is my opinion that a school trustee who abandons his permanent residence or domicile in the territory served by the school, and acquires a permanent residence or domicile elsewhere, vacates his office as school trustee at the time of such abandonment.

4. Answering your fourth question, it is my opinion that a trustee, having once vacated the office of trustee by abandonment of his permanent residence or domicile in the territory served by the school, and by having acquired a permanent residence or domicile elsewhere, would not, at some later date, *ipso facto*, regain the office of trustee merely by moving back into the territory served by the school.

In this connection, your attention is invited to Quarterly Report of Attorney General, Vol. 52, page 279, wherein it is pointed out that domicile is a mixed question of law and fact, dependent upon the intention and acts of the party. In the opinion there reported, the following statement is quoted from *Pope v. Howell*, 227 Ala. 154, 149 So. 222:

"In *Holmes v. Holmes*, 212 Ala. 597, 599, 103 So. 884, 886, the law of domicile is thus stated: 'a domicile once acquired is presumed to continue until a change, *facto et animo*, is shown. *Bragg v. State*, 69 Ala. 204. If there was a change, there must have been both an abandonment of his former domicile with no present intention to return, and the establishment of another place of residence with intention to remain permanently or, at least, for an unlimited time; the former may be inferred from the latter. *Allgood v. Williams*, 92 Ala. 551, 8 So. 772; *Caldwell v. Pollak*, 91 Ala. 353, 8 So. 546; *Young v. Pollak*, 85 Ala. 439, 5 So. 279; *Merrill v. Morrissett* (76 Ala. 433) *supra*.'"

Very truly yours,

SI GARRETT
Attorney General

April 8, 1954

Hon. M. H. Hurt,
Register, Circuit Court,
Macon County,
Tuskegee, Alabama.

Elections—Absentee Ballots—Registers.

Where the primary election is held on May 4, 1954, and a county is also holding a referendum election to be held on April 27, 1954, to determine the classification of a county as wet or dry, the register is entitled to compensation for his services relative to absentee ballots for each of said elections. the compensation to be fixed in accordance with the provisions of Section 17 of Act No. 424, General and Local Acts 1949, page 601, as amended by Act No. 733, General and Local Acts 1953, page 993.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of April 3, 1954, is as follows:

"Re: Absentee voting.

"Under Act No. 733, H 9, page 993, Code 1953, the act provides that the Register can receive \$10.00 per day for 21 days in each election provided the Board of Revenue grants them that much.

"In the Primary Election of May 4th, 1954, the Register is granted 21 days from April 14th, 1954.

"In this County we have a Referendum Election for voting on dry or wet question. This Election will be on April 27th, 1954.

"You will see that from April 14, 1954, through April 22nd, 1954, the voters will be voting on both elections on the same day.

"However, these elections are not 'held on the same day' as prescribed in this Act.

"As these elections are not held on same day, I am asking if the Register can collect for 21 days on each election."

Prior to the passage of Act No. 733, General and Local Acts 1953, page 993, the compensation of the register for handling absentee ballots was governed by Section 17 of Act No. 424, General and Local Acts 1949, page 601, as amended by Act No. 921, General and Local Acts 1951, page 1570.

In construing Section 17, as amended, *supra*, this office, in Quarterly Report of Attorney General, Vol. 65, page 14, held as follows:

"It is, therefore, my opinion that when two elections are held on the same day (other than municipal elections held at a time different from a primary or general election), as in the instant case, a special election and a general election, under the provisions of Section 17, as amended, *supra*, the register, or person acting in his stead, is entitled to the compensation provided by said section for his services in handling the absentee ballots for each of the two elections."

By Act No. 733, *supra*, Section 17, *supra*, was amended to read as follows:

"Section 17. The court of county commissioners, board of revenue or other governing body of the county shall determine the amount of compensation to be paid to the register for the performance of his duties in connection with absentee ballots during the twenty days prior to each election to which this act applies and for his services on the day of election, but such compensation shall not exceed ten dollars (\$10) per day. The compensation hereby prescribed shall be the total compensation allowed the register for the performance of duties relative to absentee ballots in all elections held on the same day, and shall be paid from the county treasury, except in case of a municipal election held at a time different from a primary or general election, in which event payment shall be from the city or town treasury. Provided, no municipal employee shall be compensated for his services in this regard."

It is to be noted that the compensation now prescribed by Act No. 733, *supra*, amending Section 17, *supra*, "shall be the total compensation al-

lowed the register for the performance of duties relative to absentee ballots in all elections held on the same day."

But, here, the elections are separate and different elections, and here they are not held on the same day.

It is my opinion, therefore, that the register is entitled to compensation for his services in connection with absentee ballots for each election, this compensation to be fixed in accordance with the provisions of Section 17, supra, as amended by Act No. 733, supra.

Yours very truly,

SI GARRETT
Attorney General

April 9, 1954

Hon. Raymond D. Fowler
Secretary-Treasurer
Employees' Retirement System
C A P I T O L

Employees' Retirement System

The Alabama High School Athletic Association is not a public or quasi public organization of the State, as contemplated by Section 12, Act No. 515, General Acts 1945, page 734, as amended by Act No. 79, General and Local Acts 1953, page 106.

Opinion by Assistant Attorney General Straub.

Dear Sir:

Your request for an official opinion, bearing date of February 8, 1954, is as follows:

"Would you please give me your official opinion as to whether the Alabama High School Athletic Association is 'a public or quasi public organization of the State,' as contemplated by Section 12 of Act No. 515, General Acts 1945, page 749, as amended by Act No. 79, General and Local Acts 1953, page 106. I am enclosing a copy of the Handbook published by this organization which contains its constitution."

According to Article III of the Constitution of the Alabama High School Athletic Association, "Any high school of Alabama which has been placed

on accredited relations above junior grades by the State Department of Education is entitled to become a member of the Association, provided the principal files an application for membership, pays the annual dues and signs an agreement to be governed by the Constitution, By-Laws, and rulings of the Association and sends in regularly such reports as are required."

There follow certain rules governing the amount of dues, delinquencies, management and the like. The organization is operated with funds derived from the payment of dues by member schools.

In Quarterly Report of Attorney General, Vol. 67, page 25, it was held that the Alabama Association for Crippled Children and Adults, Inc., was not a public or quasi public organization within the meaning of Section 12, Act No. 515, General Acts 1945, page 734, as amended by Act No. 606, General Acts 1947, page 445. Act No. 515, *supra*, has been further amended in respects not pertinent here by Act No. 79, General and Local Acts 1953, page 106.

Following the reasoning outlined in Quarterly Report of Attorney General, Vol. 67, page 25, it is my opinion that the Alabama High School Athletic Association is not a public or quasi public organization of the State, as contemplated in Section 12 of Act No. 515, as amended, *supra*.

Very truly yours,

SI GARRETT
Attorney General

April 12, 1954

Hon. George P. Quarles
Judge of Probate
Dallas County
Selma, Alabama

Counties—Funds—Public Welfare Department—Words and Phrases.

1. Section 10 of Act No. 703, General and Local Acts 1951, page 1211, provides authority to a county board of revenue, court of county commissioners, or other governing body of a county to make appropriations for supplies for the use of county welfare departments.

2. The term "supplies" includes equipment, such as a dictaphone set.

Opinion by Assistant Attorney General Lee.

Dear Sir:

Your request for an official opinion, bearing date of March 23, 1954, is as follows:

"The Dallas County Welfare Department has requested the Dallas County Board of Revenue to purchase a dictaphone set for the use of the Dallas County Welfare Department. The County Welfare Director tells me that the State has run out of money for equipment purchases for the Welfare Department and that equipment of various kinds has been bought in the past by other counties for the use of their county welfare offices.

"Can Dallas County legally spend its funds for the purchase of a dictaphone set for the use of the Dallas County Welfare Department?"

Your question is answered in the affirmative.

Section 10 of Act No. 703, General and Local Acts 1951, page 1211, pertaining to county appropriations for county welfare departments, provides in part as follows:

"The county board of revenue, court of county commissioners, or other governing body of the county and the incorporated municipalities within the county may make joint appropriations for office space, the maintenance thereof, and supplies."

In my opinion, a dictaphone set would come within the term "supplies" as used in Section 10 of Act No. 703, supra. This office has held that the authorization to furnish "supplies" includes the authority to furnish certain equipment such as a suitable desk and chair. See Quarterly Report of Attorney General, Vol. 23, page 76.

The words, "joint appropriations," should not be interpreted to mean that each appropriation "for office space, the maintenance thereof, and supplies" has to be made jointly with an incorporated municipality within the county.

The statute provides that "the county board of revenue . . . may make joint appropriations." (Emphasis supplied.) "May" refers to permissive authority and not a mandatory duty to make appropriations. Supplies may be purchased under authority of this section without the necessity of a "joint" appropriation.

It, therefore, appears that the Dallas County Board of Revenue has specific statutory authority to spend funds for the purchase of a dictaphone set for the use of the Dallas County Welfare Department.

Yours very truly,

SI GARRETT
Attorney General

April 12, 1954

Hon. Joe H. Williams
Superintendent of Banks
Department of Commerce
C A P I T O L

Banks and Banking.

The operation of a part of a bank's business in an annex or addition that is connected to the main building by a passage over an alleyway and a conveyor system running underneath the alleyway is not a violation of Section 125, Title 5, Code of Alabama 1940, or any other section of the State's banking laws.

Opinion by Assistant Attorney General Grant.

Dear Sir:

Your request for an official opinion, bearing date of March 24, 1954, is as follows:

"One of the banks operating in Etowah County, Alabama, proposes to establish a drive-in window in an adjacent building which will be connected to the main building quarters by an overpass and also, a tunnel. The question that we request you advise us on is whether or not the establishment of such drive-in window would be in violation of the Banking Laws of Alabama prohibiting the establishment of branch banking in certain counties. It is our information that the Banking Law has not been amended to permit branch banking in Etowah County, Alabama.

"We are enclosing a pencil sketch and the architect's drawing of the contemplated structure. After these drawings have been reviewed, please return them so that they may be forwarded to the bank as requested.

"The Comptroller of Currency of Washington, D. C., is withholding his approval until a copy of an opinion from your office is received. It certainly will be appreciated if you will give this request preferred attention."

A review of the architect's plan and drawing indicates the building and facilities of an established bank on the corner of Broad Street and Third Street in the City of Gadsden, Alabama. Immediately south of the banking house and contiguous thereto, there is a 20-foot wide alleyway which has been dedicated to public use, but in which the bank owns a reversionary property right; and immediately south of the alleyway and bordering on it, the construction of the new addition is proposed. This new addition is

to be connected to the present building by an overhead passageway through which the bank's patrons are to travel in the normal course of business from one section or division of the banking facility to that of another. Underneath the alleyway a conveyor system is to be constructed which connects the new addition to the present bank building. A drive-in depository will be operated and maintained on the lower floor of the proposed addition, by which depositors may drive through the entire block and make deposits in the bank without leaving the automobile.

Title 5, Section 125, Code of Alabama 1940, is quoted as follows:

"No bank, or any officer, agent or director thereof shall be permitted to establish a branch or office for the transaction of the banking business other than at its principal place of business."

After carefully considering the matter, I am of the opinion that the proposal does not violate Section 125, supra, or any other section of the banking laws, for the reason that such proposal or expansion as contemplated here cannot be construed as an attempt to open a branch bank or branch office thereof nor to transact the banking business at a location other than the principal place of business of the American National Bank of Gadsden.

Very truly yours,

SI GARRETT

Attorney General

April 20, 1954

Hon. Curtis H. Rodgers
Clerk, Circuit Court
Covington County
Andalusia, Alabama

Costs and Fees—Highway Patrol—Public Safety Department—
Witnesses.

The witness fee for a Highway Patrol officer in cases brought by such officer where no indictment is found, the State fails to convict, or the indictment or complaint abates or is nolle prossed, is not a proper claim against the fine and forfeiture fund or any other fund of the county. Act No. 585, General and Local Acts 1953, page 828.

Opinion by Assistant Attorney General Smith.

Dear Sir:

Your request for an official opinion, bearing date of April 2, 1954, is as follows:

"I will be most grateful to you if you will give me a ruling on the following:

"If the grand jury fails to indict, or the state takes a nol-pros or fails to convict, all for traffic violations, does the law give the highway patrolman, who lawfully appears as a witness for the state, the right to prove up and collect his attendance fees from the fine and forfeiture fund of the county or a similar fund? I have unauthentic information that the general law has been changed to preclude such collection, but I am unable to find such a law."

Your inquiry is answered in the negative.

Section 10 of Act No. 585, General and Local Acts 1953, page 828. provides, in pertinent part, as follows:

"Section 10. . . . Provided, however, that no witness fee, arrest fee, mileage cost, or any other fees or costs shall be paid by any county out of its funds to said department and no fine and forfeiture claim shall be issued against the fine and forfeiture fund of any county to or for any such Highway Patrol Officer for or on account of those cases brought in any court or before any grand jury by any such officer wherein no indictment is found, the state fails to convict, or the indictment or complaint abates or is nolle prossed or is withdrawn and filed in such case."

The opinion of this office addressed to Hon. Roy O. Hill, Clerk, Circuit Court, Houston County, Dothan, Alabama, under date of October 23, 1940, and reported in Quarterly Report of Attorney General, Vol. 21, page 79, is no longer controlling. This opinion held that the fees due Highway Patrolmen as State witnesses are valid claims against the fine and forfeiture fund of the county in cases where the defendant is acquitted. Of course, this opinion was issued before the enactment of Act No. 585, supra.

Act No. 585, supra, expressly prohibits the payment of any fees or costs from any county funds or from the fine and forfeiture fund to or for any Highway Patrol officer in cases brought by such officer where no indictment is found, the State fails to convict, or the indictment or complaint abates or is nolle prossed.

It should be noted that Section 6 of Act No. 585, supra, states that no Highway Patrol officer shall be personally entitled to any costs, fees, or mileage for attending any court, but instead, such costs, fees, and mileage,

as may be due a Highway Patrol officer for attending court or for any official act, are to be collected by the proper authority of the court and remitted to the Director of Public Safety, who, in turn, pays them over to the Public Highway and Traffic Control Fund.

Very truly yours,

SI GARRETT
Attorney General

April 21, 1954

Hon. Chester Walker
Judge of Probate
Tuscaloosa County
Tuscaloosa, Alabama

Elections—Exemptions—Poll Tax and Poll Lists—Veterans.

Veteran of services in Canadian armed forces is not exempted from poll taxes because of such service.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of April 9, 1954, is as follows:

"Please give me your opinion on the following set of facts:

"I have before me a person who served honorably during the recent world war in the armed force of the Canadian government. She has just received her naturalization papers and is now a full-fledged citizen of the United States and resides in the state of Alabama, in Tuscaloosa County. She has registered to become a qualified elector in this county.

"Under the Soldier's and Sailor's poll tax exemption, as set out in Title 51, Section 238 of the Code of Alabama, 1940, as amended, is this veteran entitled to poll tax exemption?

"If possible, an answer to this inquiry before the May 4th primary will be appreciated."

It is my opinion that your question must be answered in the negative.

Title 51, Section 238, Code of Alabama 1940, to which you refer, has been superseded by Amendments XLIX and XC, Constitution of Alabama 1901; however, all these provisions, Section 238, *supra*, and the said con-

stitutional amendments, specify that for poll tax exemption purposes the veteran shall have served in the armed forces of the United States. The language in these provisions is definite and unambiguous, leaving no opportunity for construction insofar as this particular question is involved.

A veteran who has honorably served during the recent World War in the armed forces of the Canadian Government is not exempt from the payment of poll taxes.

Very truly yours,

SI GARRETT
Attorney General

April 21, 1954

Hon. Bradley Brown, Director
Department of Revenue
Jefferson County
Birmingham 3, Alabama

Jefferson County—Costs and Fees—Commissions—Ad Valorem Taxes.

The Department of Revenue of Jefferson County is entitled to no fees or commissions for assessing and collecting, on motor vehicles, the five mill tax levied pursuant to Amendment LXXXII, Constitution of Alabama 1901.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion bearing date of February 15, 1954, is as follows:

“Effective October 1st of this year we will commence assessing and collecting the additional five mill tax as provided under Act 459 of the Legislature of 1949, General Acts of 1949, which was proclaimed and adopted by the Governor on November 20, 1950, and approved and adopted in the said area of Jefferson County, Alabama, on December 16, 1952. I am attaching hereto a copy of the levy adopted by the County Commission of Jefferson County under date of February 2, 1954.

“I fail to find in the hereinabove mentioned act, or acts referred to therein, any provision dealing with the Tax Assessor's or Collector's

fees or commissions (this office acts as Tax Assessor and Tax Collector as they relate to the assessment and collection of ad valorem tax of motor vehicles). I am familiar with Section 30 and Section 191 of Title 51, which are practically verbatim in part as follows:

“In Jefferson County, no fees or commissions shall be allowed for (collecting) (assessing) the three mill county school tax and the three mill district school tax.’

“As we are now in the process of preparing our reports, forms, etc., to be used in the forthcoming year, I am desirous of an official opinion from you as to whether we are entitled to the regular commissions for assessing and collecting this five mill tax, or not.”

The five mill tax to which your request refers is a tax levied for public school purposes by virtue of Amendment LXXXII, Constitution of Alabama 1901, proposed by Act No. 459, General and Local Acts 1949, page 665, proclaimed ratified November 20, 1950 (1951 Cumulative Pocket Part, Code of Alabama 1940).

Title 51, Section 881, Code of Alabama 1940, applicable only in Jefferson County, reads as follows:

“Fees of license commissioner.—The commissioner of licenses shall receive for the assessing and collecting of state and county ad valorem tax on motor vehicles the same fees, charges and commissions fixed by law to be paid to tax assessor and tax collectors for the same services.”

Act No. 474 and Act No. 475, General and Local Acts 1951, pages 836 and 838, create the Department of Revenue of Jefferson County and prescribe the duties of said department.

Section 2 of Act No. 474, *supra*, reads as follows:

“The Department of Revenue herein provided for in said county shall have possession and exercise all of the powers, functions, and duties now or hereafter vested in the office of License Inspector or the Department of Revenue which may then exist in said county, and all of the powers, functions and duties now or hereafter vested in the office of Commissioner of Licenses of said county, as fully and effectively as if such powers, functions, and duties had been conferred specifically upon such Department of Revenue.”

Therefore, we must examine the statutes relating to fees, charges and commissions to be paid to tax assessors and tax collectors in order to answer your inquiry.

The last sentence of Amendment LXXXII, *supra*, is as follows:

“All statutes relating to the holding of elections and the levy and col-

lection of taxes in counties under the third amendment to this Constitution, with the exception hereinabove provided, shall apply." (The exception referred to is not here relevant.)

The three mill county school tax and the three mill district school tax are authorized by the Third Amendment to the Constitution of Alabama 1901.

As you point out, Sections 30 and 191 of Title 51, Code of Alabama 1940, provide that no fees or commissions shall be allowed for assessing and collecting the three mill county school tax and the three mill district school tax. It is obvious that Sections 30 and 191, *supra*, are "... statutes relating to ... the levy and collection of taxes in counties under the third amendment to (the) Constitution."

Therefore, Sections 30 and 191, *supra*, are applicable to the five mill tax levied by virtue of Amendment LXXXII, *supra*.

Premises considered, it is my opinion that your office is entitled to no fees or commissions for assessing and collecting the five mill tax on motor vehicles levied pursuant to Amendment LXXXII, *supra*. The same conclusion was reached by this office concerning ad valorem taxes in an informal opinion of this office under date of March 30, 1954, addressed to Hon. J. W. Hamilton, Tax Collector, Jefferson County, Birmingham, Alabama.

Very truly yours,

SI GARRETT
Attorney General

April 27, 1954

Hon. William V. McDermott
County Attorney
Mobile County
305 Staples-Pake Building
Mobile, Alabama

Municipalities—Counties—Streets.

1. Pursuant to the authority granted by Title 37, Section 9, Code of Alabama 1940, municipalities may by ordinance designate public streets or roads within the police jurisdiction of such municipality as one-way streets or roads for motor vehicles and other traffic.

2. The county governing body has no authority to designate streets or roads within the police jurisdiction of a municipality as one-way.

Opinion by Assistant Attorney General Barton.

Dear Sir:

Your request for an official opinion, bearing date of April 2, 1954, is as follows:

"Enclosed herewith is a duly certified copy of the resolution adopted by the governing body of Mobile County at its regular meeting on March 23, 1954, requesting an opinion by you as to the authority of the County governing body to designate public roads in Mobile County outside the corporate limits of any municipality but within the police jurisdiction of the City of Mobile, as one-way streets. You will therefore consider this request as coming direct from the Board of Revenue and Road Commissioners of Mobile County and in rendering your opinion address the same to that body.

"This particular question grew out of the request of the Parent-Teachers Association of the Mary B. Austin School at Spring Hill, a public school in Mobile County, by which that organization sought the regulation of traffic on certain streets in that vicinity and the designation and enforcement of same as one-way streets. In view of the fact that the public roads so sought to be designated as one-way streets are within the police jurisdiction of the City of Mobile, the undersigned took the position that the County governing body, was, under our existing statutes without authority to make and enforce this traffic designation. For your information, a copy of my opinion is enclosed and as a result the governing body of the City of Mobile was asked to act upon this request but the attorney for the City of Mobile took just the opposite view of the legal question that the undersigned did, hence the Board's request for your opinion thereon."

In my opinion, public streets or roads within the police jurisdiction of a municipality, but outside the corporate limits thereof, may by ordinance of such municipality be designated as one-way streets or roads for motor vehicles and other traffic.

Title 37, Section 9, Code of Alabama 1940, provides that:

"The police jurisdiction in cities having six thousand or more inhabitants shall cover all adjoining territory within three miles of the corporate limits, and in cities having less than six thousand inhabitants, and in towns, such police jurisdiction shall extend also to the adjoining territory within a mile and a half of the corporate limits of such city or town. Ordinances of a city or town enforcing police or sanitary regulations and prescribing fines and penalties for violations thereof, shall

have force and effect in the limits of the city or town and in the police jurisdiction thereof, and on any property or rights of way belonging to the city or town."

In construing Section 9, *supra*, the Supreme Court has pointed out that the police jurisdiction conferred by this section carries a measure of law-making power over this zone. See *City of Homewood v. Wofford Oil Co.*, 232 Ala. 634, 169 So. 288.

The police are authorized to make arrests within the police jurisdiction of any municipality for the violation of any valid, subsisting ordinance of the said municipality. Biennial Report of Attorney General 1926-1928, page 160.

Section 9, *supra*, expressly provides that ordinances enforcing police regulations shall have force and effect within the police jurisdiction. An ordinance designating a public street or road within the police jurisdiction as a one-way street or road for motor vehicles and other traffic would, in my opinion, be a valid police regulation within the scope of the authority conferred upon cities and towns by that section.

In view of the police power of the municipality within its police jurisdiction, the county would have no authority to designate streets or roads therein as one-way.

Very truly yours,

SI GARRETT
Attorney General

April 29, 1954

Hon. Bert E. Thomas

Tax Assessor

Mobile County

Mobile, Alabama

Taxation—Exemptions—Parks.

1. Land dedicated to public use as a park would be exempt from taxation, but not where the use of the property dedicated is restricted to the owners or residents in the locality of the property.
2. Land dedicated as a private park is assessable to the grantors, as such is not a dedication to public use or ownership so as to exempt it from taxation.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion, bearing date of April 13, 1954, is as follows:

"We are enclosing herewith a copy of an instrument by which C. E. Hakanson and George D. Hillman, owners of lot 31 of Block 'A' of Edgewood Park Subdivision, undertake to dedicate said lot as a park for use of themselves and of all owners of other lots in the said Edgewood Park Subdivision.

"The premises considered, will you kindly advise us as follows:

"1. Is the land in question exempt from ad valorem taxation?

"2. If the land in question is not exempt from ad valorem taxation, in what name or names must it properly be assessed?"

It is my opinion that your first inquiry should be answered in the negative.

Title 51, Section 2, Code of Alabama 1940 (as amended, but here not material), exempts from ad valorem taxation "all property, real and personal, of the United States and this state, and of county and municipal corporations in this state." See Constitution of Alabama 1901, Section 91. There is no other exemption which could be applicable to the property in question.

The property under consideration, being dedicated by the grantors as a park, for use by themselves and by all present and future owners of the lots in a particular subdivision, does not, in my judgment, come within the above exemption. To constitute a "dedication" of a park, there must coexist the dedicator's intent to donate and an acceptance by the public.—*Fort Payne Company v. City of Fort Payne*, 216 Ala. 679, 114 So. 63. And the "dedication" must be to a public use accepted by the public.—*Town of Leeds v. Sharp*, 218 Ala. 403, 118 So. 572. It can be properly made only to the public, and a private right or use cannot be created by dedication.—*Hill v. Wing*, 193 Ala. 312, 69 So. 445. See also *Drummond v. Franck*, 252 Ala. 474, 41 So. 2d 268.

Generally, land dedicated to public use as a park and accepted by the public would be exempt from taxation. However, where the use of the property dedicated is restricted to owners or residents in the locality of the property, the exemption is not applicable.—61 C. J., Taxation, Section 343, page 360. Land dedicated by an owner, platting land as an addition to a city, as a park and tennis court for the use of the occupants of the addition for a park and tennis ground, is not dedicated for a public use, because the use is restricted to the owners or residents in the addition, so that the land is private property, subject to taxation.—*People v. Ricketts*, 248 Ill. 428, 94 N. E. 71; Cf. *McChesney v. People*, 99 Ill. 216.

In answer to your second inquiry, it is my opinion that the land in question is still assessable to the grantors, as the instrument in question is ineffectual to accomplish a dedication to public use or ownership so as to exempt the property from taxation.

Very truly yours,

SI GARRETT
Attorney General

May 3, 1954

Hon. Chester Walker
Judge of Probate
Tuscaloosa County
Tuscaloosa, Alabama

Exemptions—Game and Fish—Licenses—Taxation—Veterans.

Probate judges, or other persons authorized to issue commercial fishing licenses as provided for by Act No. 784, General and Local Acts 1953, page 1069, may issue such commercial fishing licenses to disabled veterans who qualify for a business license under the law providing for veterans' exemptions.

Opinion by Assistant Attorney General Harris.

Dear Sir:

Your request for an official opinion, bearing date of March 17, 1954, is as follows:

"Please answer the following question pertaining to Act No. 784, Legislature of Alabama, as approved August 14, 1947, relative to Commercial Fishing license. Section 4 of this Act, which begins on page 43 of the Alabama Regulations relating to Game, Fish and Fur-Bearing Animals, Season 1953-1954, reads as follows: 'The license for the use of such commercial fishing gear as specified in this Act shall be for residents ten dollars and for nonresidents twenty dollars.' The Act refers to, as what is known as trotline fishing and places it in the category of commercial fishing regardless of whether or not the fisherman sells the fish caught on said trotline and levies a license of \$10.00 for each trotline fisherman.

"Under the Acts, as amended, allowing disabled veterans license exemption for business license to engage in business in Alabama, is a veteran entitled to a commercial fishing license by the payment of the issuance

fee of 50 cents, provided he has not claimed the exemption allowed to engage in any other type of business to which veterans are given exemptions? In simple words, can a Probate Judge issue a commercial fishing license to a disabled veteran, who qualifies for a business license, without charging him the full fee of \$10.00?"

I am of the opinion that probate judges, or other persons authorized to issue commercial fishing licenses as provided for by Act No. 784, General and Local Acts 1953, page 1069, may issue such commercial fishing licenses to disabled veterans who qualify for a business license under the law providing for veterans' exemptions.

Act No. 233, General and Local Acts 1953, page 299, amends Section 852, Title 51, Code of Alabama 1940, relating to the exemptions of disabled veterans from payment of certain licenses. This Act, in pertinent part, is quoted as follows:

"Every bona fide permanent resident of the State of Alabama who served in the United States Army, Navy, or Marine Corps during World War I between April 6, 1917, and November 11, 1918, or in the Spanish-American War between April 21, 1896 and July 4, 1902, or any soldier, sailor or other person serving in the armed forces of the United States between December 7, 1941 and the termination of World War II by the signing of a definitive treaty of peace, or at any other time past, present, or future, when the United States was, is or shall be engaged in hostilities with any foreign state, whether as a result of a declared war or not, and who, at the time of his application for license, as hereinafter provided for, shall be physically disabled to the extent of twenty-five per cent, or more, shall, upon sufficient identification and upon sufficient proof of such disability and upon sufficient proof of being a permanent resident of this State, and upon the production of an honorable discharge or other proof of termination of honorable service from the United States Army, Navy, or Marine Corps during World War I, the Spanish-American War, or from the armed services of the United States, within the respective limits hereinabove prescribed, be exempt from business or occupational license taxes to the extent, and subject to the conditions hereinafter specified. Provided that no exemption, deduction or commutation shall be allowed any person from the license or tax on what is commonly known as rolling stores; nor shall said exemption, deduction or commutation be construed as relieving any person from the payment of any license tax for the registration or operation of any motor vehicle upon the public highways of this State, unless otherwise provided by law."

I am also of the opinion that a person who fishes commercially is conducting a business or occupation within the meaning of the above Act.

Act No. 784, *supra*, provides for three separate business licenses. Section 1 of said Act provides for the use of certain types of commercial fish-

ing gear in commercial fishing operations. Section 4 of said Act provides for the issuance of licenses by the judges of probate, the commissioner of licenses, and such other person or persons duly appointed by the Director of Conservation and authorized by him. Said section also provides that the license for the use of commercial fishing gear shall be \$10.00 for residents and \$20.00 for nonresidents.

Section 12 of said Act provides that any person engaging in the business of buying, selling, or handling fresh water, non-game fish on a wholesale basis shall be required to purchase an annual wholesale license in the amount of \$25.00, or, if handling such fish on a retail basis, an annual retail license in the amount of \$10.00.

I am of the opinion that either of these three licenses are business or occupational licenses within the meaning of Act No. 233 above quoted, and that the judges of probate of the several counties of the State, and other persons authorized to issue such licenses, may issue any of the three licenses mentioned above to veterans who qualify under the law for such exemptions.

Yours very truly,

SI GARRETT
Attorney General

May 3, 1954

Hon. George P. Quarles
Judge of Probate
Dallas County
Selma, Alabama

Counties—Dallas County—Funds—Schools.

Dallas County may purchase from funds provided by Title 62, Section 28, Code of Alabama 1940, a projector and screen to be used in conjunction with a safety program in all the schools of said county.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion bearing date of March 23, 1954, is as follows:

“The City of Selma is operating a traffic safety program, with a policeman as operator and a sound truck. They also plan, in conjunction with

this traffic safety program, to send this operator to all of the County schools, as well as the City schools, both white and colored. The City has requested that the County buy a movie projector and screen at an approximate cost of about \$575.00. The Board of Revenue is agreeable to making this purchase if the County can legally spend its money for this project.

"Can Dallas County legally buy this projector and screen for the purpose as outlined above?"

Your attention is directed to Title 62, Section 28, Code of Alabama 1940 (Act No. 195, General and Local Acts 1936-37, Ex. Session, page 226), a provision applicable to Dallas County, which is as follows:

"Expenditure for county purposes.—The county governing bodies in such counties are authorized to appropriate out of any monies in the county treasury not otherwise appropriated and to expend not exceeding the sum of twelve hundred dollars per annum for any county purposes not otherwise provided for by law that in their judgment are worthy and for the interest of the county." (Emphasis supplied.)

The Supreme Court of Arkansas in *Johnson et al. v. Donham et al.*, 191 Ark. 192, 84 S. W. 2d 374, a case quoted with approval in Quarterly Report of Attorney General, Vol. 19, page 319, had this to say in construing a provision which authorized the disbursement of county funds for county purposes.

"... The 'county purposes' for which the county's money may be disbursed are those purposes which promote the welfare of the county as a whole and of its citizens—such as, the erection of county buildings, bridges over county roads, and such other purposes as would promote the general health and welfare of its citizens—..."

It is my conclusion that the Board of Revenue of Dallas County may purchase from the funds provided by Section 28, *supra*, a movie projector and screen, to be used in conjunction with a traffic safety program being operated by the City of Selma in the schools of the entire county. I do not think that any one could seriously contend that this expenditure would not promote the general welfare of the citizens of Dallas County. Cf. Quarterly Report of Attorney General, Vol. 39, page 24.

Very truly yours,

SI GARRETT
Attorney General

May 4, 1954

Hon. Reo Kirkland

Probate Judge and Chairman

of Escambia County Board of Revenue

Brewton, Alabama

Counties—Conservation, Department of—Timber—Tractors.

A county is authorized to purchase a tractor with plow for use of the Forestry Division of the State Department of Conservation in fighting forest fires and preserving forests of the county, under the provisions of Title 12, Section 12(22), Code of Alabama 1940, as amended by Act No. 344, General Acts 1945, page 560.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion, bearing date of April 23, 1954, is as follows:

"The undersigned Board of Revenue of Escambia County, Alabama does hereby request you to make a ruling for said Board and give us your opinion in writing and send it to our Chairman and Probate Judge as soon as possible and make answer to the questions hereby presented to you as follows:

I.

"(1) Can the Board of Revenue of Escambia County, Alabama legally purchase and pay for one tractor with plow, etc., for the use of the State Department of Conservation and its Forestry Department in Escambia County for fighting fires and protecting and preserving the forest and timber resources of Escambia County and do so under and in accordance with Order No. 7, hereto annexed?

"(2) Can said tractor and machinery named in said Order No. 7 adopted April 12, 1954 by the Board of Revenue of Escambia County, Ala., per copy hereto annexed—and made a part hereof—can said County pay for said machinery legally and carry out said Order No. 7 under the laws of Alabama?

"(3) The document showing said Order No. 7, hereto annexed;—is a true copy of the Minutes of the Board of Revenue of our County. Is this Order No. 7 lawful and valid as it is,—or should it be amended in some way to make it valid. If any amendment is necessary would you kindly indicate what amendment is necessary to make said Order valid?

II.

"The Board of Revenue favors said Order like it is.

III.

"The County Board of Revenue adopted said Order No. 7 under the following laws;—(1) Title 12, Section 12, Sub. 22, Code of 1940:—amended by the General Act 1945, page 560, (2) See Title 12, Section 12, Sub. 22 in **Pocket Parts** of the Code of 1940—(3) See Volume 44, Page 82 of Reports of Attorney General."

I am of the opinion that your first inquiry should be answered in the affirmative.

Order No. 7, referred to above, is as follows:

"ORDER NO. 7 (Protection from Timber Fires.)

"Agreed and ordered by the Board of Revenue of Escambia County, Alabama, on this the second Monday and the 12th day of April, 1954 as follows:—

"(1) That on motion of Commissioner Keller and seconded by Commissioner Martin said motion and this order were unanimously adopted for the prevention and putting out of forest fires and destruction of natural resources, including timber.

"(2) That the County do purchase from Hale Tractor Company, Atmore, Alabama, one new Ferguson Tractor with plow, etc., Motor No. Z129-367592, for the sum of \$2,570.00 less discount of \$270.00 leaving a balance of \$2,300.00. Said tractor is purchased for the use of the State Forestry Department of Alabama, Escambia, County Division and shall be used only in Escambia County, Alabama and is being furnished the said Forestry Department for its use in fighting fires and preserving the forests of this county. That the payment of said tractor shall be made from the General Fund of the County and that the appropriation of \$100.00 per month here-to-fore made by the County and being paid by the County each month to the State Department of Conservation for the use of the forestry department, be stopped and no further payment shall be made to the said department until the said tractor has been fully paid for, or until the further orders of the Board. It is agreed and ordered that payment for the above tractor will not be made until authorized by the **Attorney General.**"

Title 12, Section 12(22), Code of Alabama 1940, as amended by Act No. 344, General Acts 1945, page 560, provides as follows:

"Section 12. Authority of Court.—The court has authority: . . . 22. To set aside, appropriate and use county funds or revenues for the

purpose of developing, advertising and promoting the agricultural, mineral, timber, water, labor, and all other resources of every kind of their respective counties, and for the purpose of locating and promoting agricultural, industrial, and manufacturing plants, factories and other industries in their respective counties. The court is authorized to enter into contracts with any person, firm, corporation or association to carry out the purposes set forth in this subdivision. . . ." (Emphasis supplied.)

Forest fire prevention work, in my opinion, clearly comes within the purview of developing and promoting the timber resources of a county as used in the above-quoted provision of law. And the purchase by the county of the tractor in question for the use of the Forestry Division of the State Department of Conservation for its use in fighting forest fires and preserving forests in the county would be a legitimate expenditure of county funds. Quarterly Report of Attorney General, Vol. 15, page 341; Quarterly Report of Attorney General, Vol. 25, page 16.

Your second inquiry, which is to the same effect as your first inquiry, should be also answered in the affirmative.

In answer to your third inquiry, it is my opinion that Order No. 7, set out above, is legal and valid and no amendment thereto is necessary.

Very truly yours,

SI GARRETT
Attorney General

May 7, 1954

Hon. Frank M. Stewart, Commissioner
Department of Agriculture and Industries
C A P I T O L

Fees—Stamps—Agriculture and Industries—Inspection—Inter-state Commerce.

The stamp tax fee levied against a manufacturer or seller of commercial feed is an inspection fee, and is required by Title 2, Section 59, Code of Alabama 1940, as amended by Act No. 358, General Acts 1947, page 242, to be collected from the manufacturer or seller upon all feed sold, including all feed sold by such manufacturer or seller to the Commodity Credit Corporation for delivery to its agents in this State.

Opinion by Assistant Attorney General Grant.

Dear Sir:

Your request for an official opinion, bearing date of December 7, 1953, is as follows:

"The Commodity Credit Corporation, an instrumentality of the Federal Government has, within the past several months, purchased quantities of cottonseed meal from manufacturers or processors of this product in Alabama. The Cottonseed meal is sold by the manufacturer to the Commodity Credit Corporation in the State of Alabama as a commercial feed and the product is later resold by the Commodity Credit Corporation for livestock feeding purposes.

"A feed manufacturer in the State has contended that since this product is sold to an instrumentality of the Federal government the stamp tax fee levied upon the sale of this feed should not be collected. They also contend that since a portion of this feed is shipped by the Commodity Credit Corporation to other states for resale and use the stamp tax fee does not apply.

"We sample and analyze this feed and require that it comply with all regulatory requirements governing the sale of commercial feed in Alabama, which requirements are set out in Sections 56-68, Title 2, Code of Alabama of 1940, as amended.

"We do not attempt to collect this fee from the Commodity Credit Corporation, but we have called upon the manufacturer-seller for payment of the fee; also, we have not attempted to collect this fee on sales of commercial feed sold by the manufacturer-seller to the C. C. C. for delivery to a destination in another state. The feed in question is delivered to the C. C. C. at the manufacturer-seller's premises and the C. C. C. transports this feed to a warehouse in Alabama where it is offered for sale and sold to users. A portion of this feed which is not sold in Alabama is afterwards shipped or transported by C. C. C. to other states for sale and use in other states.

"Section 59 of Title 2, Code of Alabama of 1940, as amended, levies a stamp tax fee upon each ton of commercial feed which is sold in the State of Alabama. It will be appreciated if you will advise us whether the stamp tax fee should be collected by this Department upon the sale of feed sold by a manufacturer in Alabama to the Commodity Credit Corporation, where this feed is delivered to the C. C. C. in Alabama as explained in the preceding paragraph."

Under the above statement of facts, you request my opinion as to whether or not the stamp tax fee should be collected by you upon the sale of commercial feed sold by a manufacturer in Alabama to the Commodity Credit Corporation.

I am of the opinion that your question should be answered in the affirmative.

The sale of commercial feed in Alabama is regulated by the provisions of Title 2, Sections 57-65, 67, and 68, Code of Alabama 1940 (Sections 57, 59 and 60 being amended by Act No. 358, General Acts 1947, page 242), and Title 2, Section 66, Code of Alabama 1940, as amended by Act No. 70, General and Local Acts 1951, page 286. This law, among its other provisions, prescribes certain conditions which must be met before commercial feed can be sold or offered for sale in this State. Section 59, as amended, *supra*, levies a stamp tax fee of twenty cents per ton on commercial feed sold in Alabama. This section is quoted in pertinent part as follows:

"Each and every person manufacturing or selling any commercial feeds as defined in Section 56 of this Article shall pay to the Commissioner a stamp tax fee of twenty cents per ton for each ton of commercial feed sold in this State. . . ."

It will be observed that the statute imposes this stamp tax fee upon the manufacturer or seller, and not upon the purchaser. Such fee, when collected, accrues to the credit of the agricultural fund as required by Title 2, Section 31, Code of Alabama 1940, which is quoted in pertinent part:

". . . any fee or license or the imposition of any fine or penalty . . . shall accrue to the agricultural fund. . . ."

Title 2, Section 33, Code of Alabama 1940, is specific in providing the purposes for which funds from the "agricultural fund" may be expended, and is quoted in part as follows:

"§ 33. . . . Said fund shall be expended exclusively for the expenses of the regulatory control and administrative work of the department of agriculture and industries, except as otherwise expressly provided by law."

The facts here indicate that you sample and analyze the feed to insure that its standard may meet the requirements prescribed by the statute. Such inspection would appear to be clearly within the scope of regulatory control and administrative work provided for in Section 33, *supra*. The stamp tax fee of twenty cents per ton assessed against the manufacturer or seller is collected, deposited in the "agricultural fund," and may then be used for regulatory control and administrative work of the department. The stamp tax fee thus appears to be an inspection fee, and not a tax. *Red "C" Oil Co. v. Board of Agriculture of North Carolina*, 222 U. S. 380, 56 L. Ed. 240. Inspection fees being charges made or levied to defray the cost of inspection, the regulatory laws levying such fees have been upheld as being within the power of a state to enact. *Savage v. Jones*, 225 U. S. 501; *Standard Stock Food Co. v. Wright*, 225 U. S. 540, 56 L. Ed. 1197.

Even though it were held that the stamp tax fee is a tax and not an inspection fee, it is not levied upon the Commodity Credit Corporation,

the purchaser, but is levied upon the manufacturer or seller. Such levy is not invalid, even though the economic burden is borne by an agency of the government, because it results in a corresponding increase in price charged to the purchaser. *James v. Dravo Contracting Co.*, 302 U. S. 134, 114 A. L. R. 318; *Silas Mason Co. v. Tax Commission*, 302 U. S. 186, 82 L. Ed. 187; *Alabama v. King & Boozer, etc.*, 314 U. S. 599, 62 S. Ct. 118, 86 L. Ed. 3.

This office has ruled that inspection fees must be paid on certain commodities sold to the State of Alabama, its counties or to the United States government. See Quarterly Report of Attorney General, Vol. 18, page 371; Vol. 48, page 229, and the authorities therein cited. This office has also ruled that a stamp tax fee is an inspection fee and not a revenue raising measure; that, being assessed against the manufacturer or seller and not the buyer or consumer, it shall be collected irrespective of the fact that the purchaser may be an instrumentality of the State of Alabama (Convict Department). See Opinions of Attorney General, Office Edition, Vol. 14, page 300.

Your inquiry here has arisen as a result of transactions in which the purchaser (The Commodity Credit Corporation) buys commercial feed from an Alabama manufacturer. The purchaser buys the feed and accepts delivery at the seller's premises here in this State. The purchaser sends for and transports the feed to its own warehouse facilities here in this State where it is offered for sale to its customer consumers. Some of the feed is afterwards shipped by said purchaser to other states where it is then offered for sale to its customer consumers in those states. The feed manufacturer contends that the stamp tax fee of twenty cents per ton should not be collected from him on the tonnage of feed being purchased by the Commodity Credit Corporation, since that agency is an instrumentality of the Federal government, and because a portion of the feed is, after being purchased here by the Commodity Credit Corporation, afterwards shipped into some other state. I am unable to agree with this contention.

Based upon the facts stated, the transaction here does not involve or constitute a transaction in interstate commerce, and hence a constitutional question affecting interstate shipments is not presented. A discussion of purchases for transportation out of the state is contained in 11 Am. Jur., Commerce, Section 42, which is quoted in pertinent part as follows:

"§ 42.—Purchase for Transportation out of State.—Purchases of goods within a state may form part of transaction in interstate commerce, for if transportation is incidental to a sale, it is immaterial which comes first. Thus, where goods are purchased in one state for transportation to another, the purchase is interstate commerce quite as much as the transportation, provided, it seems, there are circumstances demonstrating with certainty the destination of the goods. Thus, the buying of grain within a state for shipment to markets in other states constitutes interstate commerce if followed by shipments to other states In some circumstances, however, a sale is deemed to have been made in

intrastate commerce where it is optional with the purchaser whether or not the goods shall be transported out of the state. Furthermore, the mere chance shipment from one state to another of cotton purchased and sold on an exchange does not convert the purely local agreements or transactions to which they relate into subjects of interstate commerce. . . ." See also 42 Am. Jur., Commerce, Section 72.

The manufacturer or seller is required, under terms of the statute, to pay a stamp tax fee of twenty cents per ton upon each ton of commercial feed sold irrespective of the person or agency to whom it is sold.

After carefully considering the question, I am of the opinion that the stamp tax fee should be collected by you from the manufacturer or seller upon all feed sold, and this would include any and all feed sold to the Commodity Credit Corporation for delivery to its agents here in this State.

Yours very truly,

SI GARRETT
Attorney General

May 7, 1954

Hon. Isaac Johnson, Jr.
Judge of Probate
Lawrence County
Moulton, Alabama

Elections—Poll Tax and Poll Lists—Judges of Probate.

1. The judge of probate is required to furnish a list of qualified electors for each voting place to the election inspectors at each election.
2. The judge of probate is authorized to employ assistants and clerical help to prepare such lists for each election.
3. The assistants and clerical help employed to prepare such lists are to be paid for their services in the manner and at the rate prescribed by Title 17, Section 55, Code of Alabama 1940, as amended by Act No. 385, General and Local Acts 1951, page 677.
4. The assistants and clerical help employed to prepare one such list may not be paid in excess of their statutory compensation, even though they may prepare sufficient copies of said list for use in more than one election.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion bearing date of April 5, 1954, is as follows:

"As per telephone conversation of Mrs. McCarty and yourself concerning Official poll lists, I would like the Attorney General's Official opinion on the following question:

"Is the Clerical hire hired by the Probate Judge for making the lists of qualified electors entitled to 5c per name for the May Primary, June Election, November General election and any Special County or District election since each and every Poll list is added to and revised each election or is the Clerical hire paid only for the May Primary Election regardless of how many other elections are held in the two year period between the newspaper publications of said list.'"

The judge of probate is required to furnish the election inspectors in each election, at each voting place, one list of qualified electors for such voting place. Act No. 655, General Acts 1947, page 504. Also see Act No. 482, General Acts 1947, page 331, amending Title 17, Sections 38 and 40, Code of Alabama 1940; and Quarterly Report of Attorney General, Vol. 26, page 146.

Act No. 385, General and Local Acts 1951, page 677, amended Title 17, Section 55, Code of Alabama 1940, to read, in part, as follows:

"CLERICAL ASSISTANTS TO MAKE INSPECTORS' LIST.—The judge of probate may employ such assistants and clerical help as may be necessary to complete and properly prepare the list of qualified electors which the judge of probate is required to furnish the election inspectors. Such assistants shall be paid out of the county treasury by warrants, drawn by the commissioners court, board of revenue, or other governing body, on certificate of the probate judge, accompanied by the certificates of the person being paid, showing the amount is due under the provisions of this article; but the entire amount spent for such assistants and clerical help shall not exceed a sum equal to the amount obtained by multiplying the number of names on said list by five cents. . . ."

This office has ruled in an opinion to Honorable Sim L. Howell, Chairman, Board of Revenue and Control, Morgan County, under date of March 30, 1954, that: "This statute authorizes the judge of probate to employ such assistants and clerical help as may be necessary to complete and properly prepare the lists of qualified electors which he is required to furnish the election inspectors in each election. Quarterly Report of Attorney General, Vol. 48, page 110. The fixing of the amount of compensation for such help is left with the judge of probate; however, the amount of such compensa-

tion may not exceed the maximum amount provided by Act No. 385, *supra*. *Allredge v. Bailey*, 29 Ala. App. 44, 191 So. 647. . . .”

Each time assistants and clerical help are employed to complete and properly prepare the lists of qualified electors to be furnished election inspectors, said assistants and clerical help may be paid in the manner and at the rate prescribed by Section 55, as amended, *supra*. Quarterly Report of Attorney General, Vol. 8, page 198. Also see Quarterly Report of Attorney General, Vol. 48, page 106, and Quarterly Report of Attorney General, Vol. 66, page 88.

Premises considered, it is my opinion that, when necessary, assistants and clerical help may be employed to complete and properly prepare the lists of qualified electors which the judge of probate is required to furnish election inspectors in each election. Therefore, if necessary, such assistants and clerical help may be employed to complete and properly prepare such lists for the May primary, June primary, November general election, and any special election.

I am further of the opinion that the assistants and clerical help employed at any one time to complete and properly prepare such a list for an election may not be paid at a rate in excess of that prescribed by Section 55, as amended, *supra*, even though sufficient copies of such lists of qualified electors are prepared by said assistants and clerical help to be used in other elections.

It should be pointed out that the lists here under consideration are not required to be published in a newspaper. Newspaper publication of the lists of qualified electors is required to be made only at the times prescribed by Section 38, as amended, *supra*. Opinion to Hon. Sim L. Howell, *supra*.

Very truly yours,

SI GARRETT
Attorney General

May 11, 1954

Hon. Reo Kirkland
Judge of Probate and
Chairman of Board of Revenue
Escambia County
Brewton, Alabama

Counties—Conservation, Department of—Game and Fish—Employment, Employers and Employees.

County authorized to employ and pay salary of person appointed to aid and represent the county in the preservation and protection of the game and fish resources of said county.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion bearing date of April 30, 1954, reads in pertinent part as follows:

"The undersigned Board of Revenue of Escambia County, Ala., does hereby request you to make a ruling for said Board and County and give us your opinion in writing and send it to our Chairman and Probate Judge as soon as possible and make answer to the question hereby presented to you as follows:

"(1) Can the Board of Revenue of Escambia County, Ala., legally employ and pay a salary to a person appointed by the Board of Revenue to aid the County and the Board and represent the County and the Board in the preservation, protection and preventing the destruction and increasing the game and fish of County as one of the natural resources of the County? Can all the foregoing be done by said Board and County under the laws of Alabama set out and shown in a document hereto annexed and made a part hereof?"

I am of the opinion that your inquiry should be answered in the affirmative.

Title 12, Section 12(22), Code of Alabama 1940, as amended by Act No. 344, General Acts 1945, page 560, provides as follows:

"Section 12. Authority of Court.—The court has authority: . . . 22. To set aside, appropriate and use county funds or revenues for the pur-

pose of developing, advertising and promoting the agricultural, mineral, timber, water, labor, and all other resources of every kind of their respective counties, and for the purpose of locating and promoting agricultural, industrial, and manufacturing plants, factories and other industries in their respective counties. The court is authorized to enter into contracts with any person, firm, corporation or association to carry out the purposes set forth in this subdivision. . . ." (Emphasis supplied.)

In my judgment, preserving, protecting, increasing, and preventing the destruction of the game and fish resources of a county come within the purview of developing and promoting all other resources of a county as used in the above quoted provision of law. Title 8, Sections 1-252, Code of Alabama 1940 (as amended in part not here material), clearly indicates that game and fish come within the category of natural resources.

As regards the particular situation involved in your county, the Chief Examiner of Public Accounts wrote a letter to the Board of Revenue of Escambia County, dated April 28, 1954, which reads in part as follows:

"There appears in such report a charge in the amount of \$7,786.68 representing salary paid to an employee of the county styled the 'county game warden.' From the records of the State Department of Conservation it would appear that the duties of this employee were restricted to certain localities of the county. There also arises the definite question of the authority of a county to employ a 'county game warden' inasmuch as this function of government is carried out by and through the State Department of Conservation. Considerable discussion has resulted between this department and the members of the Board of Revenue of Escambia County and their counsel regarding this matter, particularly as to whether or not the activities of this employee were county-wide in nature or whether he, in actuality, was restricted to certain private hunting lands of the county. As a result of such discussion you, together with the other members of the Board of Revenue, your counsel and certain other interested parties of Escambia County have furnished this office with complete and extensive affidavits outlining in detail the duties of this employee and affirmatively showing that the duties performed by him were county-wide in scope and were as directed by the Board of Revenue of the county. In the light of the information furnished by these affidavits I am convinced that this employee, contrary to previous indications, did actually perform duties of a county-wide nature. I am, likewise, advised that the title, 'county game warden,' was in reality a misnomer, but that such employee performed certain duties with reference to the preservation of the wildlife of the county as directed by and under the supervision of the county Board of Revenue. It is my judgment that such an employee is authorized by the provisions of Title 12, Section 12, Code of Alabama 1940, as amended. By reason of these developments on the hearing of this cause I am

now relieving you of this charge and withdrawing demand that same be refunded to the General Fund of Escambia County."

I concur in the above conclusion reached by the Chief Examiner of Public Accounts.

Yours very truly,

SI GARRETT
Attorney General

May 14, 1954

Hon. Reo Kirkland
Judge of Probate
Escambia County
Brewton, Alabama

Counties—Purchasing Agent—Escambia County.

1. Under the provisions of Act No. 287, Local Acts 1935, page 170, the county governing body of Escambia County may not appoint more than one purchasing agent for such county at one and the same time.
2. The county governing body of Escambia County, under the terms of Act No. 287, Local Acts 1935, page 170, may not appoint separate and different purchasing agents for the purchase of goods, materials and supplies paid for from the several different funds of the county.
3. The county governing body of Escambia County is without authority to appoint each of the individual members of such county governing body as independent purchasing agents for the county.

Opinion by Assistant Attorney General Hardin.

Dear Sir:

Your request for an official opinion, bearing date of June 18, 1953, is as follows:

"Under a Local Act of the Legislature of 1935 found on pages 170-1 of said Local Acts it is provided that all materials, equipment and supplies of any kind for which the county is chargeable shall be obtained

upon requisition made upon the Board of Revenue of Escambia County 'or its purchasing agent' and that the officer desiring said supplies shall 'obtain the consent and approval of said court or purchasing agent, one or both, before obtaining the same and that before any such supplies are paid for they shall first be assented to, made or allowed, by said Board of Revenue, or some purchasing agent appointed and designated by said court for that purpose, either one or both—and the minute records of said court shall show said prior assent of the same.' My questions are as follows:

"1. Does the Board of Revenue of Escambia County, Alabama, under this Local Act have authority to appoint more than one purchasing agent?

"2. Does said Board of Revenue have the right to appoint a purchasing agent where the materials and supplies are to be paid from the General Fund and a different purchasing agent where the materials and supplies are to be paid for from the Gasoline Fund?

"3. Does the Board of Revenue have authority to pass a resolution and place it on the minutes appointing each of the members of the Board of Revenue as independent purchasing agents?

"To the writer it would seem that if each member of the Board of Revenue could act as an independent purchasing agent there would be very little, if any, necessity for having any Board meeting and that the members of the Board could act through out as individuals and not as a Board. Will you please advise me on these subjects."

In my opinion, each of your three inquiries should be answered in the negative. As has been pointed out in former opinions of this office, there is no authority under the general law governing the operation of courts of county commissioners, boards of revenue or similar county governing bodies permitting the appointment by such governing body of a county purchasing agent. Biennial Report of Attorney General, 1932-1934, page 76; Quarterly Report of Attorney General, Vol. 9, page 106, and Vol. 12, page 62. This being true, one must, in the instant case, look to the provisions of Act No. 287, Local Acts 1935, page 170, for authority, if such there be, permitting the appointment of a purchasing agent by the county governing body of Escambia County. It is noted that since the passage of Act No. 287, *supra*, the county governing body of Escambia County has been changed in form from a court of county commissioners to a board of revenue, such change being effected by Act No. 231, Local Acts 1943, page 129. However, it is provided by this latter act that all of the local laws governing Escambia County and its court of county commissioners then existing shall apply to and govern the operation of the board of revenue created by Act No. 231, *supra*. I, therefore, am of the opinion that the provisions of Act No. 287, *supra*, still have application to the Board of Revenue of Escambia County.

Considering the provisions of Act No. 287, supra, it appears to me that such act seeks to establish a procedure for making purchase of all goods, materials or supplies purchased by Escambia County. This act, in my opinion, authorizes the appointment by the county governing body of a purchasing agent, and further provides that all county purchases shall be made either by the county governing body or the duly appointed purchasing agent, the only exception to such procedure being that provided for emergency purchases.

Regarding your first inquiry, it is clear to me that Act No. 287, supra, contemplates the appointment of only one purchasing agent. The language and tenor of such act throughout can lend itself to no other conclusion. The act repeatedly refers to the "purchasing agent," and not "purchasing agents," and such term is used in the singular rather than the plural throughout such act. I, therefore, conclude that under the provisions of Act No. 287, supra, the county governing body may only appoint one purchasing agent at one and the same time.

Like reasoning is applicable to your second inquiry. You will also note that under the terms of Sections 2 and 3 of Act No. 287, supra, the provisions of such act, including the authority therein found to appoint a county purchasing agent, have applicability to all goods, supplies, materials, etc., of every kind purchased for the county and authorized to be paid for from county funds. This, in itself, would negative the idea that it would be permissible to appoint separate county purchasing agents to effect county purchases paid for from the different funds of the county.

As I have previously noted, I am of the opinion that your third inquiry should likewise be answered in the negative. Under the terms of Act No. 287, supra, county purchases must be made either by the county governing body, as such, or by and through the duly appointed purchasing agent. There is no authority vested in the individual members of the county governing body to make purchases for the county. Neither is there lawful authority permitting the appointment of each of such members as an independent purchasing agent for the county. This I have discussed in giving answer to your prior inquiries. I quite agree with you that such system would be impracticable and would permit the accomplishment by indirection of that which is prohibited by law from being done directly, that is, the incurring of county obligations by the members of the county governing body while acting as individuals rather than as the board of revenue as a whole. I, therefore, advise that the Board of Revenue of Escambia County may not appoint each of the members thereof as independent purchasing agents for Escambia County.

Very truly yours,

SI GARRETT
Attorney General

May 14, 1954

Hon. Reo Kirkland
Probate Judge and Chairman
of Escambia County Board of Revenue
Brewton, Alabama

Counties—Escambia County—Notices.

1. Special terms of the Board of Revenue of Escambia County, involving the appointment of officers, supplying vacancies, and any other special duty required by law to be performed, necessitate prior notice thereof, as provided for in Title 12, Section 10, Code of Alabama 1940.
2. Meetings and sessions involving merely matters of a routine nature may be held at any time upon the call of the chairman and notice given to the board members in accordance with Section 4 of Act No. 231, Local Acts 1943, page 129.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion, bearing date of April 27, 1954, is as follows:

“Re—Escambia County, Ala.

“The undersigned Board of Revenue of Escambia County, Ala., does hereby request you to make a ruling for said Board and give us your opinion in writing and send it to our Chairman and Probate Judge as soon as possible and make answer to the questions hereby presented to you as follows:

I.

“(1) Can the Board of Revenue of Escambia County, Ala., legally have extra sessions of the Board of Revenue by the call of the Chairman of the Board and notice given to all members of the Board—but without publishing said notice for ten days in some newspapers within the County as provided for in the Local Acts governing Escambia County, Alabama creating the Board of Revenue of Escambia County, and which Act is Local Act No. 231, Page 129-134 of the Local Acts of 1943—and Section 4, Page 133 of said Local Act, which provides—that said Board of Revenue may hold sessions and meetings of the Board at any time upon call of the Chairman and notice given to all members of said

Board of Revenue? The Local Act on this head is preferred by all the members of the Board for the reason that it saves time and saves cost of publication of notice.

II.

"(2) Does Title 12, Section 10 of the Code of 1940 govern all extra and special terms of the Board of Revenue of Escambia County, Ala., or not? The Board contends that the Local Law on the subject repeals said Title 12, Section 10 of the Code.

III.

"(3) Does Section 4, Page 133 of the Local Acts of 1943 creating our Board of Revenue—compel our Chairman to advertise all notices for special meetings—when it says that the—'Board of Revenue may hold sessions and meetings at any time upon call of the Chairman,' and where it says in Section 3, Page 132—'That the Chairman of said Board may exercise all powers and duties required by the Judge of Probate of a Court of County Commissioners.'

"(4) Kindly give us a ruling which the Board of Revenue can record on its Minutes and show what the law is on the subject and which ruling will protect the Board."

Rather than answer your inquiries seriatim, it is deemed expedient to discuss the situation generally which will give the desired information.

The general law relative to the terms held by the courts of county commissioners is found in Title 12, Sections 9 and 10, Code of Alabama 1940, which provides as follows:

"§ 9. Regular terms, etc.—Regular terms of the court are held on the second Mondays in each month of each year. Provided, however, that the provisions of this section shall not apply to any county of this state having a population according to the 1930 federal census of fifty thousand or more."

"§ 10. Special terms; notice of.—In cases where officers are to be appointed, or vacancies supplied, or any other special duty required by law to be performed, a special term must be held, by direction of the judge of probate, upon ten days' notice by advertisement in some newspaper in the county, or by posting up at the courthouse door, and two other public places in the county, notice of the same."

Act No. 231, Local Acts 1943, page 129, abolished the Court of County Commissioners of Escambia County and created in lieu thereof a board of revenue. Section 3 of said Act provides in part as follows:

“ . . . That all general laws of Alabama now in force, and all general laws hereafter enacted governing the jurisdiction, power, authority and duties of a Court of County Commissioners of this State and the members thereof shall apply to and govern said Board of Revenue; That all local laws governing Escambia County, Alabama and its Court of County Commissioners heretofore enacted shall apply to and govern said Board of Revenue. . . .”

This office has held that said local act did not enlarge the powers of the governing body of Escambia County in view of the above quoted provision of Section 3.—Quarterly Report of Attorney General, Vol. 36, page 71.

The most pertinent provision of said local act as affects the inquiries presented is that portion of Section 4 which provides as follows:

“Section 4. That said Board of Revenue shall hold its regular terms, sessions and meetings on the Second Monday in each month and may continue in session as long as necessary to conduct the business of said County; that said Board may adjourn its terms and sessions from time to time as may be found necessary to conduct the business of said County; that said Board may hold meetings and sessions at any time upon call of the chairman and notice given to all members of said Board; . . .”

It will be noted from the above that, under the general law, the words, “terms” and “term,” are employed.

Under Section 4 of the local act, as above quoted, the words “terms, sessions and meetings” are used in connection with the regular terms, the times of which are in conformity with the general law. The words, “meetings and sessions,” are used in regard to a call of the chairman at any time and notice given to all members of said board.

In my opinion, Title 12, Section 10, *supra*, and the provisions of Section 4 of the local act (regarding call meetings or sessions) both have a field of operation, and should be considered in *pari materia*. In matters which specifically come within the provisions of Section 10, *supra*, *viz.*, appointment of officers, supplying vacancies, and any other special duty required by law to be performed, ten days’ notice by advertisement or posting notice, as required, would be essential. On the other hand, in matters of a routine nature, and not classified as a special duty, meetings and sessions may be held at any time upon call of the chairman and notice given to the board members in accordance with the provisions of Section 4 of the local act, *supra*.

The phrase, “any other special duty required by law to be performed,” as used in Section 10, *supra*, is indefinite and uncertain, and a judicial de-

termination of the meaning thereof in certain instances would be problematical. This being the situation, I think the safest procedure would be to follow the mandate of this section when your board of revenue is contemplating considering matters, the category of which is doubtful. In other words, if the subject under consideration is not strictly a routine matter and capable of being classified as a special duty, the notice in question should be given.

Yours very truly,

SI GARRETT
Attorney General

May 19, 1954

Hon. Morse Haynes
Superintendent, Board of Education
Chambers County
LaFayette, Alabama

Schools—Elections—Taxation.

1. Elections to determine the levying of one-mill county school tax and three-mill county school tax may both be held on the same day as the general election.
2. Election officials for the general election serve as election officials for each special election, but without additional compensation.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion bearing date of May 10, 1954, is as follows:

"For many years Chambers County has had in force county wide one mill and three mill tax levies for schools, and now desires to extend these taxes for a period of years, making the first levy effective in the tax year ending September 30th, 1955, and we will greatly appreciate your opinion on these questions:

"May the one mill and three mill tax elections be held at the same time, and may they both be held on the day of the general election in November, and may the same election officers be used for both the one mill and three mill elections?

"In the event the answers are in the affirmative, will the election of officials be entitled to receive any, or is there any requirement for any additional compensation for their services in officiating at the one and three mill elections?"

In my opinion all three parts of your first inquiry should be answered in the affirmative and your second inquiry in the negative.

One-mill county school tax elections are governed by the provisions of Title 52, Chap. 10, Art. 6 (Sections 246-253), Code of Alabama 1940. Section 253, *supra*, provides as follows:

"§253. Compensation of election officers.—The election hereinbefore provided for may be had at the time of holding any regular election within the county, and if held at any such time the inspectors and officers of the general election shall conduct at the same time the election herein provided for; and for such services they shall receive no compensation other than that allowed them for the holding of the general election; but if such an election is had at any other time than that of holding a regular election within the county, then the election officers shall receive the same pay as that for holding a general election." (Emphasis supplied.)

County and district three-mill school tax elections are provided for in Title 52, Chap. 10, Art. 7 (Sections 254-274), Code of Alabama 1940. Section 257, *supra*, provides as follows:

"§ 257. Officers of Election.—The inspectors and officers of the special county election shall be appointed, and said election shall be held and the results of such election shall be declared in the same manner and by the same officers as the results of the regular election for county officers, under the general election laws of the state, provided that the election may be held at the time for holding any regular election in the county, and if held at such time the inspectors and officers of the general election shall conduct at the same time the election herein provided for and for such services they shall receive no compensation other than that allowed them for the holding of the general election and if the election is held at some other time than that of holding the regular election in the county then the election officers shall receive the same pay as that for holding the general election." (Emphasis supplied.)

This office has heretofore ruled that an election to determine the levying of a one-mill county school tax and a three-mill county school tax may be held on the same day. Quarterly Report of Attorney General, Vol. 9, page 72.

It will be noted that each of the sections above quoted contain like provisions regarding the time of holding the elections, and the designation and

compensation of the election officials. This is shown by the emphasized portions thereof.

The words "any regular election," as used in the statutory provisions in question, in my opinion, include the general election. This conclusion is evidenced by the further statutory mandate that the election officials of the general election shall serve as election officials for the special election or elections held at the same time, but to serve without additional compensation.

This opinion is predicated on the assumption that the holding of the two special elections in question is otherwise legally authorized as provided by law.

Very truly yours,

SI GARRETT
Attorney General

May 25, 1954

Hon. Joe H. Williams
Superintendent of Banks
Department of Commerce
C A P I T O L

Banks and Banking—Calhoun County—Loans.

1. A bank that establishes a branch under the authority of Act No. 387, General and Local Acts 1953, page 461, may not legally make loans at its branch banking house.

2. A bank that establishes a branch under the authority of Act No. 387, General and Local Acts 1953, page 461, may not engage in a general banking business at its branch house.

Opinion by Assistant Attorney General Grant.

Dear Sir:

Your request for an official opinion, bearing date of April 27, 1954, is as follows:

"Re: Act No. 387, General Acts 1953, Page 461 Branch Banking.

"We are enclosing to you herewith the following information pertaining to the subject Act and will appreciate an opinion from you regard-

ing certain questions which have been raised by a National Bank in connection with same.

"1. Letter dated October 8, 1953 from Mr. S. L. Galbraith, President of The Anniston National Bank, Anniston, Alabama.

"2. Copy of our letter dated October 13, 1953 which was in reply to Mr. Galbraith's letter.

"3. Copy of a memorandum opinion dated September 24, 1953, rendered to this Department by Mr. Thomas M. Galloway, a former Assistant Attorney General of your office having application to the necessity of approval of the State Superintendent of Banks for the establishment of a branch bank by a National Bank.

"4. Copy of a memorandum opinion dated September 24, 1953, also rendered to this Department by Mr. Thomas M. Galloway outlining his interpretation of Act No. 387 dealing with the same subject.

"5. Letter dated April 23, 1954, addressed to this department from the law firm of Knox, Jones, Woolf and Merrill.

"You will note from the letter from the law firm mentioned in the above paragraph they are desirous of having answered two specific questions regarding whether a branch bank has the authority to perform the two functions as outlined in their letter.

"After the enclosed papers have served the desired purpose we will very much appreciate same being returned to us along with your opinion and an extra copy of such opinion so that we may forward same to our source of inquiry in this matter."

From an examination of the file as enumerated above, I find that the two specific questions that you ask are:

1. Is a bank that establishes a branch under the authority of Act No. 387, General and Local Acts 1953, page 461, entitled to make loans at its branch banking house?
2. Is a bank that establishes a branch under the authority of Act No. 387, General and Local Acts 1953, page 461, entitled to carry on a general banking business at its branch banking house?

Based upon the facts presented and a careful study of the legislative history of the Act, I am of the opinion that each of these questions should be answered in the negative.

Act No. 387, *supra*, provides in pertinent part as follows:

"Section 1. This Act shall apply in and only in counties having a population of not less than 74,000 nor more than 93,000 inhabitants according to the 1950 or according to any subsequent decennial federal census.

"Section 2. Any bank, whether incorporated or unincorporated, within this State, now or hereafter having a combined paid-in capital and paid-in or earned surplus of at least six hundred thousand dollars and situated in the county shall have power to establish, maintain and operate within the limits of the county, wherein the principal place of business of such bank is situated, one or more branch banks, branch offices, branch agencies, additional officer or branch places of business for the receipt of deposits, payment of checks, provided that such bank before the establishment of any such branch or branches, first secures the written consent thereto of the State Superintendent of Banks. . . ." (Emphasis supplied.)

The Anniston National Bank has, under authority of the above, applied for and has been granted the privilege of opening a "branch bank" and I understand from the facts that the "branch bank" is now operating, but confining its activities to the receipt of deposits and the payment of checks drawn upon it and its principal or the "main bank."

Although "branch bank" and "branch banking" have not been defined by the appellate courts of this State, the question has been considered and decided in other jurisdictions and discussed by text writers. The weight of authority appears to treat the relationship of the parent or "main bank" and its "branch bank" as that of principal and agent and that the "branch bank" could engage in doing the same kind of business as that done by the principal. *Mullinax v. American Trust Company*, 189 Tenn. 220, 225 S. W. 2d 38. In California the rule is to the effect that "branch banks," for most purposes, are not regarded as separate institutions, but the relationship existing between the parent or main bank and its "branches" is that of principal and agent. *Vanciel v. Kumle*, (Cal.), 153 P. 2d 785; 7 Am. Jur., Banks, Section 25, page 41.

In considering the use of the words "branch banks" as used in the Act now being considered, and the intent of the Legislature in selecting this term, I shall also consider the original bill as introduced in the Legislature during the 1953 Regular Session. It appears that when Act No. 387, *supra*, was originally introduced it was Senate Bill 258, by Mr. McCary. The original bill contained the phrase "or lending of money." Thus in its original form the bill read:

"Section 2 . . . one or more branch banks, branch offices, branch agencies, additional officer or branch places of business for the receipt of deposits, payment of checks, or lending of money, . . ."

A house amendment was offered to the bill by Representative Thomson of Calhoun County (the county affected), on August 14, 1953, deleting the phrase "or lending of money" from the original bill and this amendment was adopted by the House by a vote of 66-0, and adopted by the Senate by a vote of 31-0. This shows that the Legislature did consider whether the branches to be permitted in Calhoun County, Alabama, or any other county or counties qualifying under the population classification, would be confined to the activity of receiving deposits and payment of checks, or, whether in addition to these activities, they might also be permitted to engage in the business of lending money.

I am of the opinion that the provisions of the Act restrict the branches that may be opened for business pursuant thereto to the receiving of deposits and the payment of checks. A bank established as a branch under the authority of said Act may not legally make loans or engage in a general banking business.

Yours very truly,

SI GARRETT

Attorney General

June 2, 1954

Hon. L. W. Jinks

Judge of Probate

Bullock County

Union Springs, Alabama

Counties—Road and Bridge Fund—Courthouses—Opinions
Overruled, Modified or Distinguished.

1. County governing body may equip and furnish courthouse with proceeds from special tax provided by Section 215 of the Constitution of 1901 and Title 12, Section 186, Code of Alabama 1940.

2. Quarterly Report of Attorney General, Vol. 49, p. 120, Vol. 54, p. 171, and Vol. 60, p. 35, are hereby overruled insofar as they are in conflict with this opinion.

Opinion by the Attorney General.

Dear Sir:

Your request for an official opinion bearing date of May 15, 1954, is as follows:

"We are now in the process of constructing additions, repairing and renovating throughout the Bullock County Court House.

"Your official opinion is hereby respectfully requested as to whether or not the County governing body may legally purchase seats, pews, chairs, desks, drinking fountains, shelving for record books, stationary cabinets and counters for this newly renovated Court House out of the proceeds which will be received by the County from the special tax for County buildings, bridges and roads, as authorized to be levied by the County under Section 215 of the Constitution of Alabama 1901, and under Title 12, Section 186 of the Code of Alabama of 1940."

A construction of pertinent parts of the following provisions is necessary in order to rule upon the problem you have presented:

Section 215, Constitution of Alabama 1901:

"No county in this state shall be authorized to levy a greater rate of taxation in any one year on the value of the taxable property therein than one-half of one per centum; provided, that to pay debts existing on the sixth day of December, eighteen hundred and seventy-five, an additional rate of one-fourth of one per centum may be levied and collected which shall be appropriated exclusively to the payment of such debts and the interest thereon; provided, further, that to pay any debt or liability now existing against any county, incurred for the erection, construction, or maintenance of the necessary public buildings or bridges, or that may hereafter be created for the erection of necessary public buildings, bridges, or roads, any county may levy and collect such special taxes, not to exceed one-fourth of one per centum, as may have been or may hereafter be authorized by law, which taxes so levied and collected shall be applied exclusively to the purposes for which the same were so levied and collected."

Title 12, Section 186, Code of Alabama 1940:

"Special tax for county buildings, bridges and roads.—The court of county commissioners or other governing body of like jurisdiction in any county in this state, may levy and collect such special taxes as it may deem necessary not to exceed one-fourth of one per centum per annum, for the purpose of paying any debt or liability now existing against any county incurred for the erection, construction or maintenance of the necessary bridges or public buildings, or incurred for the erection of public roads since the twenty-eighth day of November, 1901, or that may hereafter be created for the erection, repairing, furn-

ishing or maintenance of public buildings, bridges or roads; which taxes so levied and collected shall be applied exclusively to the purpose for which the same are so levied and collected."

Section 186, *supra*, specifically provides that the special tax levied under the provisions thereof may be used to pay any debt hereafter created for the furnishing of public buildings. If this is a valid exercise of the mandate of Section 215, *supra*, then there would appear to be no doubt of the authority of a county to expend such funds in the manner you contemplate.

Although Section 215, *supra*, purports on its face to provide that a special tax may be levied to pay a debt that may hereafter be created for the erection only of necessary public buildings, bridges, or roads, our Supreme Court has construed said section as follows:

"In the case of *So. Ry. Co. v. Cherokee County*, 144 Ala. 579, 42 South 66, it was held, upon reasoning which we fully approve, that the clause, 'that may hereafter be created,' refers to contemplated debts—that is, debts contemplated by the commissioners' court for erecting, maintaining, and repairing public buildings and roads—and is intended to provide for the payment of such debts." (Emphasis supplied.) *Southern Railway Company v. Jackson County*, 189 Ala. 436, 66 So. 570.

The Supreme Court of Alabama, construing a provision of the Constitution of 1875 which was similar to the one here under consideration, held as follows:

"The remaining contention against the constitutionality of the statute is that it contains the provision for furnishing the court house with suitable furniture, in violation of the provision of the clause of the constitution first above quoted since that limits the power of the legislature to levy a special tax to pay such debts created by the county for the erection of necessary public buildings. In this we cannot concur. The authorization to levy a tax to erect a court house, includes and confers the authority to provide for furnishing it with suitable furniture." *Alabama Great Southern Railroad Co. v. Reed*, 124 Ala. 253, 27 So. 19.

In *Board of County Commissioners of Bernalillo County v. McCulloh, Attorney General*, 52 N. M. 210, 195 P. 2d 1005, the Supreme Court of New Mexico, treating substantially the same problem with which we are here concerned, and holding that the power to "erect" includes power to equip, made the following statement:

"The courts are, with one exception, unanimous in holding that there is implied power to equip public buildings where power is given to erect them. *Hudgins v. Mooresville Cons. School Dist.*, *supra* (312 Mo. 1, 278 S. W. 769); *Midland Special School Dist. v. Central Trust Co.*, 8

Cir., 1 F. 2d 124; Territory ex rel. Overholser v. Baxter, supra (16 Okl. 359, 83 P. 709); Moon v. Alred, supra (Tex. Civ. App., 277 S. W. 787); State ex rel. Davis v. Barber, 139 Fla. 706, 190 So. 809; Oklahoma County Excise Board v. Kurn, 189 Okl. 203, 115 P. 2d 113; Board of Com'rs v. Malone & Co., 179 N. C. 110, 101 S. E. 552; Hendrick v. School Dist., 44 Wyo. 204, 10 P. 2d 970; Jewett v. School Dist., 49 Wyo. 277, 54 P. 2d 546.

"The one decision which holds that the power to purchase sites and erect suitable buildings for school purposes does not include the implied power to equip such buildings, is Grabe v. Lamro, Etc. Dist., 53 S. D. 579, 221 N. W. 697.

"There is a difference of opinion among the courts as to the character of equipment authorized. The Florida, Oklahoma, North Carolina and Wyoming courts affirm the power to equip such buildings, but limit the equipment to that which becomes a part of the building, such as desks in school buildings, which are fastened to the floor. The other cases cited hold that the power to erect a public building includes the implied power to furnish and equip it so that it can be used for the purpose for which it is erected."

From a consideration of the above cited authorities, it is my opinion that your question should be answered in the affirmative. The county governing body may legally purchase seats, pews, chairs, desks, drinking fountains, shelving for record books, stationary cabinets and counters for the newly renovated court house out of the proceeds of the special tax levied under authority of Section 215, supra and Section 186, supra.

Former opinions of this office found in Quarterly Reports of Attorney General, Vol. 49, page 120, Vol. 54, page 171, Vol. 60, page 35, holding that revenues derived under Section 215, supra, may be used only for erection or construction of public buildings, are hereby overruled insofar as they are in conflict with this opinion.

You have not indicated in your request for an opinion the specific purpose or purposes for which the authorized levy was made by your county governing body. As a matter of precaution, you are advised that said tax so levied and collected must be applied exclusively to the purposes for which the same was levied and collected. Section 215, supra, and Section 186, supra. If the said tax was levied to pay certain obligations or debts not as yet paid or satisfied, then the proceeds of said levy may not be diverted to the purpose mentioned in your request. Quarterly Report of Attorney General, Vol. 37, page 53. See also Quarterly Report of Attorney General, Vol. 49, page 104, and Vol 60, page 35.

Very truly yours,

SI GARRETT
Attorney General

June 8, 1954

Hon. Charles F. Hackmeyer,
Commissioner, City of Mobile,
P. O. Box 841,
Mobile 5, Alabama.

Municipalities—Officers and Offices—Water.

1. The governing body of the City of Mobile does not have the authority to abolish the Board of Water and Sewer Commissioners of the City of Mobile created under the provisions of Act No. 775, General and Local Acts 1951, page 1359.
2. A member of the governing body of the City of Mobile cannot, while such member, also be a member of the Board of Water and Sewer Commissioners of the City of Mobile.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of May 10, 1954, is as follows:

"Under the authority contained in an Act approved on September 11, 1951, General Acts of Alabama of 1951, page 1359, the Board of Commissioners of the City of Mobile, Alabama, adopted an ordinance (a true copy of which is attached) creating a Board of Water and Sewer Commissioners of the City of Mobile. The Board of Water and Sewer Commissioners thus created has issued revenue bonds pursuant to the provisions of said Act, and the principal amount of said bonds when added to the principal amount of all outstanding general obligation bonds issued by the City of Mobile is in an amount larger than the constitutional debt limit of the City of Mobile. (Alabama Constitution of 1901, Section 225.) In other words, if the Board of Commissioners of the City of Mobile did by duly adopted ordinance abolish the Board of Water and Sewer Commissioners of the City of Mobile and the principal amount of the revenue bonds issued by the Board of Water and Sewer Commissioners of the City of Mobile became a general obligation of the City as defined in Section 225 of the Alabama Constitution of 1901, then the total outstanding indebtedness of the City of Mobile would be in excess of the amount allowed by the aforesaid Section of the Alabama Constitution.

"Section Three of the aforesaid Act of the 1951 Legislature provides, among other things that the members of the Board of Water and

Sewer Commissioners shall receive such salaries as may be fixed from time to time by the governing body of the municipality.

"Your opinion is respectfully requested on the following points:

"1. Does the Board of Commissioners of the City of Mobile have the authority to abolish the Board of Water and Sewer Commissioners of the City of Mobile by duly adopted ordinance?

"2. If your answer to question one is in the affirmative, then would the revenue bonds issued by the Board of Water and Sewer Commissioners of the City of Mobile become a general obligation of the City of Mobile, thus making the entire indebtedness of the City of Mobile larger than the amount allowed under Section 225 of the Constitution of Alabama of 1901?

"3. Does the Board of Commissioners of the City of Mobile have the authority to appoint one of its members to the Board of Water and Sewer Commissioners of the City of Mobile, at the expiration of the term of one of the present members of the Board of Water and Sewer Commissioners?

"4. If a member of the Board of Commissioners of the City of Mobile was appointed as a member of the Board of Water and Sewer Commissioners of the City of Mobile, then would he be holding two offices of profit under the State of Alabama at one and the same time in violation of Section 280 of the Constitution of Alabama of 1901?"

The Board of Water and Sewer Commissioners of the City of Mobile, hereinafter called the Board, was organized pursuant to the provisions of Act No. 775, General and Local Acts 1951, page 1359.

Section 4 of Act No. 775, *supra*, provides in part as follows:

"Each Board created under the provisions of this Act shall be deemed to be a public agency or instrumentality exercising public and governmental functions to provide for the public health and welfare,"

The validity of its organization has been upheld by the Supreme Court of Alabama and the Board has been referred to as a corporation separate and distinct from the City of Mobile. *City of Mobile v. Board of Water and Sewer Commissioners*, 258 Ala. 669, 64 So. 2d 824.

The City of Mobile, by ordinance duly adopted by its governing body, transferred to the Board the water and sewer system of the City of Mobile.

By Act No. 775, *supra*, and by the ordinance giving the city's consent thereto, the Board is given the right to enter upon, use, occupy and dig up any street, alley, road, highway or other public places necessary to be en-

tered upon, used or occupied in connection with the acquisition, construction, improvement, maintenance or operation of the water system or sewer system.

This is the grant by the Legislature in the nature of a franchise right and the weight of authority is, in the absence of special circumstances or language in the grant indicating a temporary and revocable authority, that a street franchise silent as to the term of its duration is, in view of the expense incident to its exercise and the improbability that the parties would undertake the consummation thereof except for its continued existence, not a mere license, revocable at the will of the grantor, but a contractual and proprietary right immune from any interference or impairment. *City of Bessemer v. Birmingham Electric Company*, 248 Ala. 345, 27 So. 2d 565.

This being a grant by the Legislature in the exercise of its sovereign power, the grant continues until revoked by the Legislature or until it ceases to exist by the terms of some provision made therefor in the legislative grant itself. *Atkinson v. City of Gadsden*, 238 Ala. 556, 192 So. 510; *Phenix City v. Alabama Power Company*, 239 Ala. 547, 195 So. 894.

In the ordinance adopted by the city, and the agreements entered into thereafter, the Board assumed the payment of the principal and interest on all outstanding bonds and other obligations of the city issued in connection with the water and sewage system of the City of Mobile. These amount to many thousands of dollars and some of the bonds do not mature until 1977.

In addition, other bonds have been issued by the Board itself payable only from the special revenues derived from properties acquired by the Board.

Under Section 13 of Act No. 775, *supra*, the holders of such special revenue bonds are given the right either at law or in equity to enforce and compel the Board to perform all duties required by the act including the fixing, charging and collecting of rates, fees and charges for the use of or for the services and facilities furnished by the water system and sewage system to the end that their bonds be paid.

By Section 16 of Act No. 775, *supra*, it is provided as follows:

"When all the bonds and other obligations assumed by the Board and all the revenue bonds issued by it shall have been fully paid or provisions for such payment shall have been made, then all properties, whether tangible or intangible, then owned and operated by the Board shall become the property of the City and all rights of the Board in and to the same shall thereupon immediately vest in the City, and the Board shall be automatically dissolved." (Emphasis supplied.)

From what has been said above, I am of the opinion that the governing body of the City of Mobile does not have the authority to abolish

the Board of Water and Sewer Commissioners of the City of Mobile. It is my further opinion that it is the legislative intent that said Board shall continue in existence until it is automatically dissolved as provided in Section 16, supra. This automatic dissolution cannot take place until all the bonds and other obligations assumed by the Board and all the revenue bonds issued by it shall have been paid in full, or provisions for such payment shall have been made.

It follows, therefore, that your first question is answered in the negative.

It is stated in 67 C. J. S., Officers, Section 20, page 130, as follows:

"It is contrary to the policy of the law for an officer to use his official appointing power to place himself in office, so that, even in the absence of a statutory inhibition, all officers who have the appointing power are disqualified for appointment to the offices to which they may appoint; and similarly a member of an appointing board is ineligible for appointment by the board, even though his vote is not essential to a majority in favor of his appointment, and although he was not present when the appointment was made, and notwithstanding his term in the appointing body was about to expire; nor can the result be accomplished indirectly by his resignation with the intention that his successor shall cast his vote for him. . . ."

It is my opinion that this principle of law is applicable here and results in your third question being answered in the negative.

The answer to your first and third questions being in the negative, it is unnecessary to answer your second and fourth questions.

Yours very truly,

SI GARRETT
Attorney General

June 28, 1954

Hon. Paul J. Hooton
County Solicitor
Randolph County
Roanoke, Alabama

Pool—Judges of Probate—Licenses—Municipalities.

The judge of probate has the authority to license the operation of billiard rooms only within the corporate limits of the cities and towns in his respective county.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion, bearing date of April 2, 1954, is as follows:

"I would like an opinion on the following question, though I am sure I already understand the law, the request is made by the writer as County Solicitor of Randolph County.

"Question: Can the Probate Judge of this or any other county in the State of Alabama license the operation of a Billiard or Pool Room other than within the corporate limits of a city or a town in said County?"

The answer to your question is in the negative.

Title 14, Section 238, Code of Alabama 1940, provides as follows:

"§ 238. Billiard rooms may be licensed.—Authority is hereby vested in the various probate judges within the State of Alabama to license the operation of billiard rooms within the corporate limits of the cities and towns of their respective counties as hereinafter provided."

The provisions of Section 238, *supra*, authorize the probate judge of each county in the State to license the operation of billiard rooms within the corporate limits of the cities and towns of his respective county; and, by implication, the judge of probate has no authority to license the operation of billiard rooms outside the corporate limits of cities and towns in his respective county.

In an opinion of this office found in Biennial Report of Attorney General, 1926-28, page 48, it was held that a license to operate a pool or billiard table cannot be issued for any place outside the corporate limits of a town or city.

It is, therefore, my opinion that the judge of probate has the authority to license the operation of billiard rooms only within the corporate limits of the cities and towns in his respective county.

Yours very truly,

SI GARRETT
Attorney General

June 29, 1954

Hon. Charles E. Rentz
Clerk, Circuit Court
Marengo County
Linden, Alabama

Marengo County—Clerks of Circuit Court—Costs and Fees—
Witnesses.

Act No. 250, General and Local Acts 1951, page 525, does not authorize the clerk of the Circuit Court of Marengo County to receive a 5% commission on fees collected as State's witness fees in criminal cases docketed in the Circuit Court of Marengo County.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion, bearing date of April 7, 1954, is as follows:

"Pursuant to Alabama Act No. 250, relating to Marengo County, approved July 19, 1951, State witnesses are paid from the fine and forfeiture fund of the County. Section 5 of this Act provides as follows:

"This Act shall not be construed so as to in any way reduce the commission or fees of the clerk of the Circuit Court of Marengo County, the clerk of the County Court, or the sheriff of Marengo County, Alabama, or the payment thereof, and such fees shall be payable in the same amount as now provided by law."

"Title 13, Section 198, paragraph 16, of the 1940 Code of Alabama makes provision for five per cent commission to be paid to the Clerk. In the construction of this Code section, I note Jan.-Mch. 1942 Atty. Gen. Rep., page 129 and also Jan.-Mch. 1939 Atty. Gen. Rep., page 331. However, in view of said Section 5 of said Act No. 250, supra, is the Clerk of the Circuit Court of this County entitled to five per cent compensation on such witness fees."

The answer to your question is in the negative.

Title 13, Section 198, Code of Alabama 1940, as amended by Act No. 617, General Acts 1947, page 465, provides, in pertinent part, as follows:

"16. To render to the county treasurer, court of county commissioners, or board of revenue, as of December thirty-first and June thirtieth of each year, a statement in writing and under oath, of the fines assessed

and forfeitures obtained during the preceding six months, the amount of each, and against whom each was assessed or obtained, and also what money they have received for the county, specifying from whom, on what account, and the amount in each case; and, after deducting from such amount five per cent for their compensation, they must pay the balance to whomsoever is custodian of the county funds."

Act No. 250, General and Local Acts 1951, page 525, provides, in pertinent part, as follows:

"Section 2. That when any person appears as a State witness in a criminal case either in the Circuit Court or the County Court of Marengo County, Alabama, and procures a certificate of attendance signed by the clerk of said court, said certificate shall be negotiable and payable upon due presentation by the depository or treasurer of said county out of the fine and forfeiture fund of said county.

"Section 3. That it shall be the duty of the clerk of the Circuit Court of Marengo County, and the clerk of the County Court of Marengo County, upon the effective date of this act, to immediately transfer all monies payable or collected by said clerk for the payment of State witnesses' fees, either before the Grand Jury, Circuit Court, or County Court, to the fine and forfeiture fund of said county."

By virtue of Act No. 250, *supra*, any person appearing as a State's witness in any criminal case before the Circuit Court or County Court of Marengo County shall be paid by the county treasurer or depository out of the fine and forfeiture fund of Marengo County. Further, the act requires that the clerk of the Circuit Court and County Court of Marengo County shall pay all monies payable or collected for the payment of State's witness fees into the fine and forfeiture fund of Marengo County.

Therefore, it appears from Act No. 250, *supra*, that fees payable or collected by the clerk of the Circuit Court and County Court of Marengo County as State's witness fees shall go to the fine and forfeiture fund, and that the State's witnesses shall be paid from this same fine and forfeiture fund. Hence, it appears that the fine and forfeiture fund of Marengo County is just a depository for State's witness fees.

In an opinion of this office found in Quarterly Report of Attorney General, Vol. 14, page 331, the pertinent provision of Section 198, as amended, *supra*, which is set out above, was construed. The opinion, in pertinent part, is as follows:

"In counties which still have their fine and forfeiture fund into which all money collected by the clerk as fines, forfeitures, and witness fees goes, the clerk is only entitled to the five percent commission on the fines and forfeitures. In Biennial Report of Attorney General, 1926-1928, page 158, we find this statement:

"It is my opinion, and you are so advised, that subsection 16 of Section 6724 confines the five percent commission to **fin**es and **forfeitures** and that, therefore, you could not legally charge this commission on funds coming into your hands under the operation of Section 3670.'

"You are further referred to the following opinions of this office: Biennial Report of Attorney General, 1928-1930, page 990; Office Edition of Attorney General, Vol. IV, page 221. A study of these opinions indicates that a clerk in such counties, i. e., counties having a fine and forfeiture fund, is entitled to five percent commission on **fin**es and **forfeitures only** and not on witness fees. This reasoning is based on the theory that the witness fees collected is money for the witness and not money for the county."

Therefore, on the basis of the above cited opinion of this office and the provision in Act No. 250, *supra*, to the effect that in Marengo County witness fees are paid into the fine and forfeiture fund, it is my opinion that the clerk of the Circuit Court of Marengo County is not entitled to a 5% commission on State's witness fees paid out of the fine and forfeiture fund as a result of appearing in a criminal case as provided in Section 198, *supra*.

Hence, Section 5 of Act No. 250, *supra* (quoted in your letter of inquiry), does not have the effect of authorizing the clerk of the Circuit Court of Marengo County to receive a 5% commission on fees collected as State's witness fees in criminal cases docketed in the Circuit Court of Marengo County.

Yours very truly,

SI GARRETT
Attorney General

June 30, 1954

Hon. Joe H. Williams

Superintendent of Banks

Department of Commerce

C A P I T O L

Banks and Banking—Credit Unions—Loans—Officers and Offices.

A member of the credit union would be prevented from being elected and serving as director, officer, or member of the credit or supervisory committee, if, at the time of his election thereto, such member was indebted to the credit union in an amount in excess of the combined value of his holdings in deposits and shares, under Title 28, Section 295, Code of Alabama 1940.

Opinion by Assistant Attorney General Grant.

Dear Sir:

Your request for an official opinion, bearing date of April 28, 1954, is as follows:

"Under the provisions of Title 28, Section 295 of the 1940 Code of Alabama, certain limitations are placed upon the amount that a credit union can lend to any officer, director or committeeman in which he holds office. Apparently, such loan limit cannot exceed the amount of the shares owned by such officer, director or member of either the supervisory or credit committee. The question that we respectfully request that you issue an opinion on is whether or not any member would be prevented from being elected and serving in the capacity of either director, officer or member of the loan or supervisory committee if, at the time of his election, such person was indebted to the credit union in excess of the amount of his share investment.

"We certainly will appreciate an opinion on the above at your earliest convenience."

I am of the opinion that your question should be answered in the affirmative.

Title 28, Section 295, Code of Alabama 1940, contains provisions expressly prohibiting a director, or an officer, or a member of the credit committee or supervisory committee from borrowing funds from the credit union in an amount or sum greater than the combined value of his deposits and the shares that he owns outright. This section is quoted in pertinent part as follows:

". . . No director, officer or member of committee may borrow from the credit union in which he holds office beyond the amount of his holdings in it in shares and deposits, nor may he endorse for borrowers."

A literal interpretation of the aforesaid restriction would not apply to an individual member of the credit union unless and until he becomes a director, or an officer, or member of either the credit committee or supervisory committee. It is my opinion, however, that the purpose of the restriction is to prevent a director, officer, or member of either the credit or supervisory committee from being placed in a position of being indebted to the credit union over and above certain amounts. This is true even though the indebtedness or a portion thereof was created by such director, officer, or member of the committee prior to the time that he assumed office and is still outstanding at the time. In other words, it appears to have been the intention of the Legislature to provide special limitations of indebtedness which directors, officers, and members of the committees could not exceed. If a member, prior to his election to one of these offices, owes the credit

union an amount in excess of that which he could legally owe if he were an officer, a director, or a member of either committee, then in this event he would be ineligible for election to such office.

The spirit and not the letter of the statute should prevail, and a literal interpretation which would defeat the statute's purpose should not be adopted if any other reasonable construction can be given to the words. **Broadus v. Johnson**, 235 Ala. 314, 179 So. 215; **Jefferson County v. Hawkins**, 232 Ala. 398, 168 So. 443; See Ala. Digest, Statutes, Key No. 183, and cases cited therein.

It is my opinion, therefore, that a member of the credit union would be prevented from being elected and serving in the capacity of either a director, an officer, or as a member of either the credit or supervisory committee if, at the time of his election thereto, such member was indebted to the credit union in an amount in excess of the combined value of his deposits and shares owned outright.

Very truly yours,

SI GARRETT
Attorney General

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